

  
**भारत का राजपत्र**  
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed  
as a separate compilation.

**LOK SABHA**

The following Bills were introduced in Lok Sabha on 16th December, 1991:—

BILL No. 205 OF 1991

*A Bill further to amend the Customs Act, 1962.*

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Customs (Amendment) Act, 1991.

Short  
title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

52 of 1962.

2. In section 27 of the Customs Act, 1962 (hereinafter referred to as the principal Act),—

Amend-  
ment of  
section 27.

(i) in sub-section (1), for the word “duty”, wherever it occurs, the words “duty and interest, if any, paid on such duty” shall be substituted;

(ii) in sub-section (2), except in clause (d) and (e) of the first proviso, for the word “duty”, wherever it occurs, the words “duty and interest, if any, paid on such duty” shall be substituted.

3. Section 47 of the principal Act shall be re-numbered as sub-section (1) of that section and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

Amend-  
ment of  
section 47.

“(2) where the importer fails to pay the import duty under sub-section (1) within seven days from the date on which the bill of entry

is returned to him for payment of duty, he shall pay interest at such rate, not below twenty per cent. and not exceeding thirty per cent. per annum, as is for the time being fixed by the Board, on such duty till the date of payment of the said duty:

Provided that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section.”

Amendment of section 48.

4. In section 48 of the principal Act,—

(i) in the marginal heading, for the words “two months”, the words “thirty days” shall be substituted;

(ii) in the said section, for the words “forty-five days”, the words “thirty days” shall be substituted.

Amendment of section 57, 58, 60 and 67.

5. In sections 57, 58, 60 and 67 of the principal Act, the words “without payment of duty”, wherever they occur, shall be omitted.

Amendment of section 59.

6. In section 59 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The importer of any goods specified in clause (a) of sub-section (1) of section 61, which have been entered for warehousing and assessed to duty under section 17 or section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods—

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand,—

(i) all duties, and interest, if any, payable under sub-section (2) of section 61;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent. per annum or such other rate as is for the time being fixed by the Board; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.”

Insertion of new section 59A.

7. After section 59 of the principal Act, the following section shall be inserted, namely:—

Conditions for warehousing of certain goods.

“59A. (1) Notwithstanding anything contained in sub-section (2) of section 23 and in any other provisions of this Act, the importer of any dutiable goods specified in clause (b) of sub-section (1) of section 61, which have been entered for warehousing and

assessed to duty under section 17 or section 18, shall deposit fifty per cent. of the assessed duty and execute a bond binding himself in a sum equal to twice the amount of the balance of such assessed duty and interest leviable on such balance,—

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand,—

(i) all duties, and interest, if any, payable under sub-section (3) of section 61;

(ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per annum or such other rate as is for the time being fixed by the Board;

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

(2) The duty paid under sub-section (1) shall be adjusted towards the duty finally payable.

(3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of goods to another warehouse:

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty and interest, if any, payable on the goods transferred and thereupon the bond executed by the transferor shall be enforced for a sum mentioned therein, less the amount for which a fresh bond is accepted from the transferee.”

8. In section 61 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (b), for the words “three months”, the words “thirty days” shall be substituted;

(b) in the first proviso,—

(A) in clause (i), for the words “three months”, the words “thirty days” shall be substituted;

(B) in clause (ii), the words “or three months, as the case may be,” shall be omitted;

(ii) for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) Where any warehoused goods, specified in clause (a) of sub-section (1), remain in a warehouse beyond a period of one

Amend-  
ment of  
section 61.

year, by reason of extension of the aforesaid period or otherwise, interest at such rate as specified in section 47 shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year till the date of the clearance of the goods from the warehouse.

(3) Notwithstanding anything contained in section 47, on any warehoused goods specified in clause (b) of sub-section (1), the importer shall pay interest on the amount of duty at such rate as specified in section 47, for the period from the expiry of seven days from the date on which the bill of entry is returned to the importer for warehousing the goods under section 59A, till the date of clearance of the goods from the warehouse:

Provided that the Board may, if it considers it necessary so to do in the public interest, waive, by such order and under circumstances of an exceptional nature, to be specified in such order, the whole or part of any interest payable under this section in respect of any warehoused goods.”.

Amend-  
ment of  
section 60,  
72 and 73.

9. In sections 60, 72, and 73 of the principal Act, for the word and figures “section 59”, wherever they occur, the words, figures and letter “section 59 or section 59A” shall be substituted.

Amend-  
ment of  
section  
129E.

10. In section 129E of the principal Act, for the word “duty”, wherever it occurs, the words “duty and interest” shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

This Bill aims at amending the provisions mainly relating to warehousing of goods after import without payment of duty under the Customs Act, 1962. Under the present law the imported goods may be stored in bonded warehouses till their actual clearance for home consumption on payment of appropriate duty or their re-export without payment of duty to any foreign port.

2. Existing provisions permit warehousing for three months and charging of interest at the rate of 18 per cent. on delayed clearance which are being misused by the importers by blocking large amounts of revenues.

3. Besides, at present, there is no time limit for payment of duty under section 47 of the Customs Act, 1962 and also for payment of interest for delayed payment of duty.

4. This Bill seeks to curtail the period of warehousing prescribe the increased rate of interest on duty leviable on the warehoused goods, ensure prompt payment of duty and impose interest on delayed payments of duty.

5. The proposed amendments will expedite the realisation of revenue and discourage indiscriminate warehousing of imported goods and ensure prompt payment of duties.

6. The Bill seeks to achieve the above objects.

NEW DELHI;

MANMOHAN SINGH.

*The 10th December, 1991.*

**PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117(1) AND  
274(1) OF THE CONSTITUTION OF INDIA**

[Copy of letter dated the 13th December, 1991 from Dr. Manmohan Singh, Minister of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Customs (Amendment) Bill, 1991 recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution, the introduction of the above Bill in Lok Sabha.

## BILL NO. 198 OF 1991

*A Bill further to amend the Monopolies and Restrictive Trade Practices Act, 1969 and the Companies Act, 1956.*

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Monopolies and Restrictive Trade Practices (Amendment) Act, 1991.

Short title  
and com-  
mencement.

(2) The provisions of section 7 of this Act shall come into force at once and the remaining provisions shall be deemed to have come into force on the 27th day of September, 1991.

## PART I

AMENDMENTS TO THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES  
ACT, 1969Amend-  
ment of  
section 2.

2. In section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the principal Act),—

54 of 1969.

(a) the words “of any description” and “of that description” wherever they occur, shall be omitted;

(b) in clause (d),—

(i) sub-clauses (i) and (ii) shall be omitted;

(ii) for sub-clause (iii), the following rub-clause shall be substituted, namely:—

“(iii) an undertaking which, by itself or alongwith inter-connected undertakings produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or”;

(iii) the proviso and *Explanation I* shall be omitted;

(iv) in *Explanation IV*, for the words, brackets and figures “in sub-clause (ii), (iii) or (iv)” the words, brackets and figures “in sub-clause (iii) or rub-clause (iv)” shall be substituted;

(c) in clause (e), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) shares and stocks including issue of shares before allotment.”;

(d) clauses (ec), (off), (ffj), (gg) and (q) shall be omitted;

(e) in clause (r),—

(i) after the word “insurance,”, the words “chit fund, real estate” shall be inserted;

(ii) the following *Explanation* shall be inserted at the end, namely:—

*Explanation.*—For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of “service”;

(f) clauses (vv) and (w) shall be omitted.

Amend-  
ment of  
section 10.

3. In section 10 of the principal Act, in clause (b) after the words “the Central Government”, the words “or upon an application made to it by the Director General” shall be inserted.

Amend-  
ment of  
section 11.

4. In section 11 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry

(other than an inquiry upon an application by the Director General) may be made under section 10, by an order, require the Director General to make, or cause to be made, a preliminary investigation, in such manner as it may direct and submit a report to the Commission to enable it to satisfy itself as to whether or not the matter requires to be inquired into.”;

(b) in sub-section (2), the words, brackets, figures and letter “sub-clause (iii) of clause (a) of” shall be omitted.

5. In section 12 of the principal Act,—

Amendment of section 12.

(a) in sub-section (1), after clause (e), the following clause shall be inserted, namely:—

“(f) the appearance of parties and consequence of non-appearance.”;

5 of 1898.  
2 of 1974.  
(b) in sub-section (2), for the words and figures “and Chapter XXXV of the Code of Criminal Procedure, 1898”, the words and figures “and Chapter XXVI of the Code of Criminal Procedure, 1973” shall be substituted.

6. In section 12A of the principal Act, after sub-section (2), the following *Explanations* shall be inserted, namely:—

Amendment of section 12A.

“*Explanation I.*—For the purposes of this section, an inquiry shall be deemed to have commenced upon the receipt by the Commission of any complaint, reference or, as the case may be, application or upon its own knowledge or information reduced to writing by the Commission.

“*Explanation II.*—For the removal of doubts, it is hereby declared that the power of the Commission with respect to temporary injunction includes power to grant a temporary injunction without giving notice to the opposite party.”.

7. After section 13A of the principal Act, the following section shall be inserted namely:—

Insertion of new section 13B.

Power to punish for contempt.

70 of 1971.  
“13B. The Commission shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Commission;

(b) the reference to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.”.

8. In Chapter III of the principal Act,—

Amendment of Chapter III.

(a) Part A shall be omitted;

(b) the word and letter “Part B” occurring before section 27 shall be omitted.

Amend-  
ment of  
section 27.

9. In section 27 of the principal Act, in sub-section (1), for the portion beginning with the words "Notwithstanding anything" and ending with the words "for an inquiry", the following shall be substituted, namely:—

"Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—

(i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon its own knowledge or information,

if it is of opinion that the working of an undertaking is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices, inquiry".

Amend-  
ment of  
section  
27A.

10. In section 27A of the principal Act, in sub-section (1), for the portion beginning with the words "Notwithstanding anything" and ending with the words "for a inquiry", the following shall be substituted, namely:—

"Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—

(i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon its own knowledge or information,

if it is of opinion that the continuance of inter-connection of an undertaking (hereafter in this section referred to as the principal undertaking) with any other undertaking is detrimental to—

(a) the interest of the principal undertaking; or

(b) the future development of the principal undertaking; or

(c) the steady growth of the industry to which the principal undertaking pertains; or

(d) the public interest,  
inquire".

Omis-  
sion of  
Part-C.

11. Part C of Chapter III of the principal Act shall be omitted.

Omis-  
sion of  
Chapter  
III-A.

12. Chapter III-A of the principal Act shall be omitted.

13. In section 31 of the principal Act, in sub-section (1), in the proviso, after the words "Commission receives", the words "any application from the Director General or" and after the words "it may", the words "on such application or" shall respectively be inserted. Amendment of section 31.
14. In section 36A of the principal Act,—  
(a) for the portion beginning with the words "adopts one or more" and ending with the words "or otherwise", the following shall be substituted, namely:—  
"adopts any unfair method or unfair or deceptive practice including any of the following practices";  
(b) in clause (1), in sub-clause (i), after the word "quality", the word "quantity," shall be inserted. Amendment of section 36A.
15. For section 36C of the principal Act, the following section shall be substituted, namely:—  
"36C. The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry (other than an inquiry upon an application by the Director General) may be made under section 36B, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission, for the purpose of satisfying itself that the matter requires to be inquired into." Substitution of new section for section 36C.  
  
Investigation by Director General before an issue of process in certain cases.
16. In section 36D of the principal Act, in sub-section (1), —  
(a) in clause (a), the word "and" occurring at the end shall be omitted;  
(b) after clause (b), the following clause shall be inserted, namely:—  
"(c) any information, statement or advertisement relating to such unfair trade practice shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order." Amendment of section 36D.
17. In section 45 of the principal Act shall be omitted. Omission of section 45.
18. In section 46 of the principal Act, the words and figures "section 22 or section 23 or section 24 or" shall be omitted. Amendment of section 46.
19. Section 47 of the principal Act shall be omitted. Omission of section 47.
20. In section 48 of the principal Act, sub-section (2) shall be omitted, Amendment of section 48.

Substitution of new section for section 48B.

21. For section 48B of the principal Act, the following section shall be substituted, namely:—

Penalty for contravention of section 27B.

“48B. (1) Every person who exercises any voting right, in respect of any share in contravention of any order of the Central Government referred to in sub-section (1) of section 27B shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(2) If any company gives effect to any voting or other right exercised in relation to any share held in contravention of an order of the Central Government referred to in sub-section (1) of section 27B, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.”.

Amendment of section 48C.

22. In section 48C of the principal Act, for the words “which may extend to three years, or with fine which may extend to ten thousand rupees, or with both”, the following shall be substituted, namely:—

“which shall not be less than six months but which may extend to three years and with fine which may extend to ten lakh rupees:

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this section.”.

Amendment of section 50.

23. In section 56 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) A person, who is deemed under section 13 to be guilty of an offence under this Act, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five thousand rupees for every day, after the first, during which such contravention continues.

(2) If any person contravenes, without any reasonable excuse, any order made by the Central Government under section 31 or any order made by the Commission under section 37, he shall be punishable with imprisonment for a term which shall not less than,—

(a) in the case of the first offence, six months but not more than three years, and

(b) in the case of any second or subsequent offence in relation to the goods or services in respect of which the first offence was committed, two years but not more than seven years,

and, in either case, where the contravention is a continuing one, also with fine which may extend to five thousand rupees for every day, after the first, during which such contravention continues:

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this sub-section."

24. In section 54, the principal Act,—

(a) sub-section (2) shall be omitted;

(b) in sub-section (3), the words, brackets and figure "or any term of a scheme of finance, as modified under sub-section (2)," shall be omitted.

Amend-  
ment of  
section  
54.

25. In section 55 of the principal Act, after the words "the Commission under", the words, figures and letter "section 12A or" shall be inserted.

Amend-  
ment of  
section 55.

26. In section 67 of the principal Act, in sub-section (2), clauses (ac), (ba) and (g) shall be omitted.

Amend-  
ment of  
section 67.

27. The Schedule to the principal Act shall be omitted.

Omission  
of the  
Schedule.

## PART II

### AMENDMENTS TO THE COMPANIES ACT, 1956

1 of 1956. 28. In the Companies Act, 1956 (hereinafter referred to as the Companies Act), after section 108, the following sections shall be inserted, namely:—

Insertion  
of new  
sections  
108A to  
108-I.

'108A. (1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management exceed twenty-five per cent of the paid-up equity share capital of the company.

Restric-  
tion on  
acquisi-  
tion of  
certain  
shares.

(2) Where any individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management (hereinafter in this Act referred to as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of a public company, no—

(a) company in which not less than fifty-one per cent. of the share capital is held by the Central Government; or

(b) corporation (not being a company) established by or under any Central Act; or

(c) financial institution,

shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

Restric-  
tion on  
transfer  
of shares.

108B. (1) Every body corporate or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may, by order, direct that—

(a) no such share shall be transferred to the proposed transferee;

Provided that no such order shall preclude the body corporate or bodies corporate from intimating, in accordance with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person, or

(b) where such share is held in a company engaged in any industry specified in Schedule XV, such share shall be transferred to Central Government or to such corporation owned or controlled by that Government may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

*Explanation:—*In this sub-section, "market value" means in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

108C. No body corporate or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent, or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

Restric-  
tion on  
the  
transfer  
of shares  
of foreign  
companies.

108D. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and—

Power of  
Central  
Govern-  
ment to  
direct  
companies  
not to  
give  
effect  
to the  
transfer.

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares; and

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is given by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-

section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

Time within which refusal to be communicated.

108E. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Nothing in sections 108A to 108D to apply to Government companies, etc.

108F. Nothing contained in section 108A [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 108B or section 108C or section 108D shall apply to the transfer of any share by—

(a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any financial institution.

Applicability of the provisions of sections 108A to 108F.

108G. The provisions of sections 108A to 108F (both inclusive) shall apply to the acquisition or transfer of shares or share capital by, or to, an individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, who or which—

(a) is, in case of acquisition of shares or share capital, the owner in relation to a dominant undertaking and there would be, as a result of such acquisition, any increase—

(i) in the production, supply, distribution or control of any goods that are produced, supplied, distributed or controlled in India or any substantial part thereof by that dominant undertaking, or

(ii) in the provision or control of any services that are rendered in India or any substantial part thereof by that dominant undertaking, or

(b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of a dominant undertaking; or

(c) is, in case of transfer of shares or share capital, the owner in relation to a dominant undertaking.

Construction of certain expressions used in sections 108A to 108G.

108H. The expressions "group", "same management", "financial institution", "dominant undertaking" and "owner" used in sections 108A to 108G (both inclusive), shall have the meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969.

108-I. (1) Any person who acquires any share in contravention of the provisions of section 108A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation as required by section 108B, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108B has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 108C, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 108B, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 108D, or who exercises any voting right in respect of any share in contravention of any direction made by the Central Government under section 108D, shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(b) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108B, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 108D, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

29. After Schedule XVI to the Companies Act, the following Schedule shall be inserted, namely:—

Penalty for acquisition or transfer of share in contravention of sections 108A to 108D.

Insertion of new Schedule XV.

#### “SCHEDULE XV

[See section 108B(2) (b)]

1. Arms and ammunition and allied items of defence equipment, defence aircrafts and warships.

2. Atomic energy.

3. Coal and lignite.

4. Mineral oils.

5. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

6. Mining of copper, lead, zinc, tin, molybdenum and wolfram.

7. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

8. Railway transport.”.

Repeal  
and  
saving.

30. (1) The Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991, is hereby repealed.

Ord.  
8 of 1991.

(2) Notwithstanding such repeal, anything done or any action taken under the Monopolies and Restrictive Trade Practices Act, 1969 and the Companies Act, 1956, as amended by the said Ordinance, shall be deemed to have been done or ~~taken~~ under the said Acts, as amended by this Act.

54 of 1969.  
1 of 1956.

## STATEMENT OF OBJECTS AND REASONS

The Monopolies and Restrictive Trade Practices Act, 1969 (in short, MRTP Act) came into force *w.e.f.* 1st June, 1970. The basic philosophy behind the MRTP Act was never to inhibit industrial growth in any manner but to ensure that such growth is channelised for the public good and is not instrumental in perpetuating concentration of economic power to the common detriment. With the growth complexity of industrial structure and the need for achieving economies of scale for ensuring higher productivity and competitive advantage in the international market, the thrust of the industrial policy has shifted to controlling and regulating the monopolistic, restrictive and unfair trade practices rather than making it necessary for certain undertakings to obtain prior approval of the Central Government for expansion, establishment of new undertakings, merger, amalgamation, take over and appointment of Directors. It has been the experience of the Government that pre-entry restriction under the MRTP Act on the investment decision of the corporation sector has outlived its utility and has become a hindrance to the speedy implementation of industrial projects. By eliminating the requirement of time-consuming procedures and prior approval of the Government, it would be possible for all productive sections of the society to participate in efforts for maximisation of production. It is, therefore, proposed to re-structure the MRTP Act by omitting the provisions of sections 20 to 27 and transfer the provisions contained in Chapter III-A regarding restrictions on acquisition and transfer of shares to the Companies Act, 1956. The Schedule to the MRTP Act is also consequently to be transferred with modification to the Companies Act, 1956.

2. It is also proposed to enlarge the scope of inquiry by the MRTP Commission with a view to taking effective steps to curb and regulate monopolistic, restrictive and unfair trade practices which are prejudicial to public interest. It is also proposed to provide for deterrent punishment for contravention of the orders passed by the MRTP Commission and the Central Government and empower the Commission to punish for its contempt. Certain other consequential changes are also found necessary in the MRTP Act.

3. The criteria for determining dominance, applicable to acquisition and transfer of shares under newly inserted sections 108A, 108B and 108C of the Companies Act, 1956, is proposed to be determined only on the basis of market share of 25 per cent of the total goods produced, supplied, distributed or services rendered in India or substantial part thereof.

4. The Bill seeks to replace the Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991 (Ord. 8 of 1991) with modifications and to achieve the aforesaid objects.

NEW DELHI;

K. VIJAYA BHASKARA REDDY.

The 6th December, 1991.

*Notes on clauses*

*Clause 2* seeks to enlarge the definition of 'goods' by including issue of shares before allotment. The scope of the definition of 'service' is also being enlarged by including chit-fund. An *Explanation* has also been added that any dealings in real estate shall be deemed to be included in 'service'.

*Clause 3* seeks to amend clause (b) of section 10 for the purpose of empowering the Director General of Investigation and Registration to make an application to the MRTP Commission to inquire into any monopolistic trade practice.

*Clause 4* seeks to amend section 11 in order to empower the MRTP Commission to require preliminary investigation by the Director General in respect of any allegation relating to restrictive and monopolistic trade practices.

*Clause 5* seeks to amend section 12 empowering the MRTP Commission to exercise powers under the Code of Civil Procedure, 1908 regarding appearance of parties and consequence of non-appearance.

*Clause 6* seeks to amend section 12A clarifying the time of commencement of inquiry before the MRTP Commission and empowering it to grant temporary injunction *ex-parte*.

*Clause 7* seeks to insert a new section 13B empowering the MRTP Commission to punish for contempt under the Contempt of Courts Act, 1971.

*Clause 8* seeks to omit sections 20 to 26 contained in Part A of Chapter III, thereby removing pre-entry restrictions as to prior approval of the Central Government for expansion, establishment of new undertaking, merger, amalgamation, take over and appointment of directors and also for registration of certain undertakings.

*Clauses 9 and 10* seek to amend sections 27 and 27A respectively by providing that the said provisions will be applicable to any undertaking and that, besides on a reference received from the Central Government or a State Government, the Commission may inquire into any matter also upon a complaint from any trade association or consumers' association, etc., or upon its own knowledge or information.

*Clause 11* seeks to omit Part C of Chapter III containing sections 28 to 30 as a consequence of the omission of Part A of the said Chapter.

*Clause 12* seeks to omit Chapter III-A containing sections 30A to 30G which relate to restrictions on the acquisition and transfer of shares. The provisions of sections 30A to 30G were incorporated in the MRTP Act, 1969 by the MRTP (Amendment) Act, 1984 by transferring them from the Companies Act, 1956. These provisions, after being brought back to the Companies Act, 1956, will apply to dominant undertakings only.

*Clause 13* seeks to amend section 31 empowering the MRTP Commission to make inquiry into monopolistic trade practices upon an application from the Director General also.

*Clause 14* seeks to amend section 36A enlarging the definition of unfair trade practice under that section and also provides for including false representation in respect of quantity of goods. It is now not necessary to establish loss or injury to the consumers.

*Clause 15* seeks to substitute section 36C empowering the MRTP Commission to direct preliminary investigation by Director General in any matter.

*Clause 16* seeks to amend section 36D empowering the MRTP Commission to direct publication of corrective advertisement and disclosure of additional information while passing orders relating to unfair trade practices under that section.

*Clauses 17, 18, 19 and 20* contain consequential amendments, by omitting provisions relating to punishments which are prescribed for contravention of the provision of Part A of Chapter III, after Part A has been omitted by clause 8.

*Clause 21* seeks to amend section 48B in order to omit those provisions therefrom which prescribe punishments for contravention of the provision of sections 30B to 30E after these sections have been transferred to the Companies Act, 1956.

*Clauses 22 and 23* seek to amend sections 48C and 50 respectively in order to provide for deterrent punishment for contravention of the orders passed by the MRTP Commission under sections 13, 36D and 37 and by the Central Government under section 31.

*Clause 24* seeks to make a consequential amendment in section 54.

*Clause 25* seeks to amend section 55 to provide for appeal against temporary injunction granted by the MRTP Commission under section 12A.

*Clause 26* seeks to make consequential amendments in section 67 by omitting certain clauses.

*Clause 27* seeks to omit the Schedule to the MRTP Act.

*Clauses 28 and 29* seek to amend the Companies Act, 1956 for the purpose of transferring provisions of sections 30A to 30G of the MRTP Act, 1969 as sections 108A to 108-I in the Companies Act, 1956. The Schedule to the MRTP Act has now been transferred to the Companies Act, 1956 as Schedule XV.

*Clause 30* seeks to repeal and save action taken under the said Ordinance.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill has inserted the new sections 108A to 108-I in the Companies Act, 1956, section 108B of the Act which empowers the Central Government to prescribe the particulars to give intimation to transfer shares.

2. The matter in respect of which the Central Government have been empowered to make rules relate to matters of procedure and detail. The delegation of legislative powers is, therefore, of a normal character.

*Memorandum explaining the modifications contained in the Bill to replace in Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991.*

The Monopolies and Restrictive Trade Practices (Amendment) Bill, 1991, which seeks to repeal and replace the Monopolies and Restrictive Trade Practices (Amendment) Ordinance, 1991, proposes to make the following modifications in the provisions contained in the said Ordinance:—

(a) By section 2 of the Ordinance, certain clauses of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the MRTP Act) have been amended or omitted. Some more clauses are sought to be amended or omitted for carrying out the objects of the Bill.

(b) A new clause 6 is being added for amending section 12A of the MRTP Act to clarify the time of commencement of inquiry before the Commission and empowering it to grant temporary injunction *ex-parte*.

(c) A new clause 7 is being added to insert a new section 13B in the MRTP Act empowering the Commission to punish for contempt under the Contempt of Courts Act, 1971.

(d) Section 22 of the Ordinance empowering the Commission to compound offences is sought to be omitted.

(e) By section 27 of the Ordinance, section 108G was inserted in the Companies Act, 1956. This section is sought to be amended to provide that approval of the Central Government is required in case the acquisition of shares or share capital by the dominant undertaking has the effect of increase in its dominance.

## BILL NO. 203 OF 1991

*A Bill further to amend the Constitution of India.*

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

Short  
title  
and  
com-  
mence-  
ment.

1. (1) This Act may be called the Constitution (Seventy-fourth Amendment) Act, 1991.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

Insertion  
of new  
articles  
239AA  
and  
239AB.

2. After article 239A of the Constitution, the following articles shall be inserted, namely:—

Special  
Provi-  
sions  
with res-  
pect to  
Delhi.

‘239AA. (1) As from the date of commencement of the Constitution (Seventy-fourth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital territory and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

“(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

(3) (a) Subject to the provisions of the Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions, in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his

opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

**(5) The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.**

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be.

239AB. If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do.

the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA."

Provi-  
sion in  
case of  
failure  
of con-  
stitutional  
machinery.

## STATEMENT OF OBJECTS AND REASONS

The question of re-organisation of the administrative set-up in the Union territory of Delhi has been under the consideration of the Government for some time. The Government of India appointed on 24-12-1987 a Committee to go into the various issues connected with the administration of Delhi and to recommend measures *inter alia* for the streamlining of the administrative set-up. The Committee went into the matter in great detail and considered the issues after holding discussions with various individuals, associations, political parties and other experts and taking into account the arrangements in the national Capitals of other countries with a federal set-up and also the debates in the Constituent Assembly as also the reports by earlier Committees and Commissions. After such detailed inquiry and examination, it recommended that Delhi should continue to be a Union territory and provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensuring stability and permanence the arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union territories.

2. The Bill seeks to give effect to the above proposals.

New Delhi;

S. B. CHAVAN.

The 12th December, 1991.

## FINANCIAL MEMORANDUM

Clause 2 of the Bill confers powers on Parliament for regulating the total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies and other matters relating to the functioning of the Legislative Assembly. It further provides for a Council of Ministers to be appointed with the Chief Minister at the head to aid and advise the Lieutenant Governor in this exercise of his functions.

2. The proposed provisions of clause 2 will involve some expenditure to be incurred as and when the Legislative Assembly is constituted and a Council of Ministers is appointed for the National Capital Territory. The expenditure on salaries and allowances will roughly be of the order of Rs. 20 crores per annum. But there would also be a corresponding saving on account of abolition of the Metropolitan Council of Delhi to the extent of about Rs. 10 crores per annum. Though the said expenditure will ultimately be met from the Consolidated Fund of the National Capital Territory proposed to be set up under the law made in pursuance of new article 239AA, yet the said expenditure will have to be taken into account in determining the financial assistance which may be given to the National Capital Territory by way of grants from the Consolidated Fund of India.

3. The Bill does not involve any other expenditure whether of a recurring or non-recurring nature.

## BILL No. 204 OF 1991

*A Bill to supplement the provisions of the Constitution relating to the Legislative Assembly and a Council of Ministers for the National Capital Territory and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

## PART I

## PRELIMINARY

1. (1) This Act may be called the Government of National Capital Territory Act, 1991.

Short  
title and  
commence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

Defini-  
tions.

(a) “article” means an article of the Constitution;

(b) “assembly constituency” means a constituency provided under this Act for the purpose of elections to the Legislative Assembly;

(c) “Capital” means the National Capital Territory;

(d) "Election Commission" means the Election Commission referred to in article 324;

(e) "Legislative Assembly" means the Legislative Assembly of the National Capital Territory;

(f) "Scheduled Castes", in relation to the Capital, means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes in relation to the Capital.

## PART II

### LEGISLATIVE ASSEMBLY

Legislative  
Assembly  
and its  
composition.

3. (1) The total number of seats in the Legislative Assembly to be filled by persons chosen by direct election from territorial constituencies shall be seventy.

(2) For the purpose of elections to the Legislative Assembly, the Capital shall be divided into single member assembly constituencies in accordance with the provisions of Part III in such manner that the population of each of the Constituencies shall, so far as practicable, be the same throughout the Capital.

(3) Seats shall be reserved for the Scheduled Castes in the Legislative Assembly, and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the Capital bears to the total population of the Capital and the provisions of article 334 shall apply to such reservation.

Explanation.—In this sub-section, the expression "population" means the population as ascertained in the last preceding census of which the relevant figures have been published:

Provided that where such figures have not been published, then for the purpose of elections for the constitution of the first Legislative Assembly under this Act, the provisional figures of the population of the Capital as published in relation to the 1991 census shall be deemed to be the population of the Capital.

Qualifi-  
cations for  
member-  
ship of  
Legisla-  
tive As-  
sembly.

4. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless he—

(a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Schedule;

(b) is not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Duration  
of Legis-  
lative  
Assembly.

5. The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency issued under clause (1) of article 352 is in operation, be extended by the President

by order for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

6. (1) The Lieutenant Governor shall, from time to time, summon the Legislative Assembly to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

Sessions of  
Legislative  
Assembly,  
proroga  
tion and  
dissolution.

(2) The Lieutenant Governor may, from time to time,—

(a) prorogue the Assembly;

(b) dissolve the Assembly.

7. (1) The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker as the case may be.

Speaker  
and  
Deputy  
Speaker of  
Legislative  
Assembly.

(2) A member holding office as Speaker or Deputy Speaker of the Legislative Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may, at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that whenever the Assembly is dissolved the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as may be determined by the rules of procedure of the Assembly.

(4) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker, or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(5) **There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries and allowances as may be respectively fixed by the Legislative Assembly by law and, until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.**

Speaker or Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

8. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of sub-section (4) of section 7 shall apply in relation to every such sitting as they apply in relation to a sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in section 13, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Right of Lieutenant Governor to address and send messages to Legislative Assembly. Special address by the Lieutenant Governor.

9. (1) The Lieutenant Governor may address the Legislative Assembly and for that purpose require the attendance of members.

(2) The Lieutenant Governor may send messages to the Assembly whether with respect to a Bill then pending in the Assembly or otherwise, and when a message is so sent, the Assembly shall with all convenient despatch consider any matter required by the message to be taken into consideration.

10. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Lieutenant Governor shall address the Legislative Assembly and inform it of the causes of its summons.

(2) Provision shall be made by rules to be made by the Assembly regulating its procedure for the allotment of time for discussion of the matters referred to in such address.

Rights of Ministers as respects Legislative Assembly. Oath or affirmation by members.

11. Every Minister shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislative Assembly of which he may be named a member, but shall not by virtue of this section be entitled to vote.

12. Every member of the Legislative Assembly shall, before taking his seat, make and subscribe before the Lieutenant Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

Voting in Assembly, power of Assembly to act notwithstanding vacancies and quorum.

13. (1) Save as otherwise provided in this Act, all questions at any sitting of the Legislative Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as such.

(2) The Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(3) The Legislative Assembly shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislative Assembly shall be valid notwithstanding that it is discovered subsequently

that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(4) The quorum to constitute a meeting of the Legislative Assembly shall be one-third of the total number of members of the Assembly.

(5) If at any time during a meeting of the Legislative Assembly there is no quorum, it shall be the duty of the Speaker, or person acting as such, either to adjourn the Assembly or to suspend the meeting until there is a quorum.

**14.** (1) No person shall be a member both of Parliament and of the Legislative Assembly and if a person is chosen a member both of Parliament and of such Assembly, then, at the expiration of such period as is specified in or under the Representation of the People Act, 1951 and the rules made by the President under clause (2) of article 101 and clause (2) of article 190, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislative Assembly.

Vacation  
of seats.

(2) If a member of the Legislative Assembly—

(a) becomes subject to any disqualification mentioned in section 15 or section 16 for membership of the Assembly, or

(b) resigns his seat by writing under his hand addressed to the Speaker and his resignation is accepted by the Speaker.  
his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in clause (b), if from the information received or otherwise and after making such inquiry as he thinks fit, the Speaker is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(3) If for a period of sixty days a member of the Legislative Assembly is without permission of the Assembly absent from all meetings thereof, the Assembly may declare his seat vacant.

Provided that in computing the said period of sixty days, no account shall be taken of any period during which the Assembly is prorogued or is adjourned for more than four consecutive days.

**15.** (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly:—

Disquali-  
fications  
for mem-  
bership.

(a) if he holds any office of profit under the Government of India or the Government of any State or the Government of any Union territory other than an office declared by law made by Parliament or by the Legislature of any State or by the Legislative Assembly of the Capital or of any other Union territory not to disqualify its holder; or

(b) if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under the provisions of sub-clause (b), sub-clause (c) or sub-clause (d) of clause (1) of article 102 or of any law made in pursuance of that article,

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State or the Government of any Union territory by reason only that he is a Minister either for the Union or for such State or Union territory.

(3) If any question arises as to whether a member of the Legislative Assembly has become disqualified for being such a member under the provisions of sub-section (1), the question shall be referred for the decision of the President and his decision shall be final.

(4) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Disquali-  
fication  
on ground  
of defec-  
tion.

16. The provisions of the Tenth Schedule to the Constitution shall, subject to the necessary modifications (including modifications for construing references therein to the Legislative Assembly of a State, article 188, article 194 and article 212 as references, respectively, to the Legislative Assembly, section 12, section 18 and section 37 of this Act), apply to and in relation to the members of the Legislative Assembly as they apply to and in relation to the members of the Legislative Assembly of a State, and accordingly:—

(a) the said Tenth Schedule as so modified shall be deemed to form part of this Act, and

(b) a person shall be disqualified for being a member of the Legislative Assembly if he is so disqualified under the said Tenth Schedule as so modified.

Penalty  
for sit-  
ting and  
voting  
before  
making  
oath of  
affirma-  
tion or  
when  
not quali-  
fied.

17. If a person sits or votes as a member of the Legislative Assembly before he has complied with the requirements of section 12 or when he knows that he is not qualified or that he is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union

Powers,  
pri-  
vileges,  
etc., of  
members.

18. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislative Assembly, there shall be freedom of speech in the Legislative Assembly.

(2) No member of the Legislative Assembly shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Assembly or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of such Assembly of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof shall

be such as are for the time being enjoyed by the House of the People and its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly or any committee thereof as they apply in relation to members of that Assembly.

**19. Members of the Legislative Assembly shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislative Assembly by law and until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.**

Salaries and allowances of members.

**20. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempted from all taxes imposed by or under any law made by the Legislative Assembly or by or under any other law in force in the Capital.**

Exemption of property of the Union from taxation.

Provided that nothing in this section shall, until Parliament by law otherwise provides, prevent any authority within the Capital from levying any tax on any property of the Union to which such property was immediately before the commencement of the Constitution liable or treated as liable, so long as that tax continues to be levied in the Capital.

**21. (1) The provisions of article 286, article 287 and article 288 shall apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in those articles as they apply in relation to any law passed by the Legislature of a State with respect to those matters.**

Restrictions on laws passed by Legislative Assembly with respect to certain matters.

**(2) The provisions of article 304 shall, with the necessary modifications, apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in that article as they apply in relation to any law passed by the Legislature of a State with respect to those matters.**

**22. (1) A Bill or amendment shall not be introduced into, or moved in, the Legislative Assembly except on the recommendation of the Lieutenant Governor, if such Bill or amendment makes provision for any of the following matters, namely:—**

Special provisions as to financial Bills.

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of the Capital;

(c) the appropriation of moneys out of the Consolidated Fund of the Capital;

(d) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the Capital or the increasing of the amount of any such expenditure;

(e) the receipt of money on account of the Consolidated Fund of the Capital or the custody or issue of such money;

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation would involve expenditure from the Consolidated Fund of the Capital shall not be passed by the Legislative Assembly unless the Lieutenant Governor has recommended to that Assembly the consideration of the Bill.

Procedure  
as to  
lapsing  
of Bills.

23. (1) A Bill pending in the Legislative Assembly shall not lapse by reason of the prorogation of the Assembly.

(2) A Bill which is pending in the Legislative Assembly shall lapse on a dissolution of the Assembly.

Assent to  
bills.

24. When a Bill has been passed by the Legislative Assembly, it shall be presented to the Lieutenant Governor and the Lieutenant Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President ;

Provided that the Lieutenant Governor may, as soon as possible after the presentation of the Bill to him for assent, return the Bill if it is not a Money Bill together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and when a Bill is so returned, the Assembly will reconsider the Bill accordingly, and if the Bill is passed again with or without amendment and presented to the Lieutenant Governor for assent, the Lieutenant Governor shall declare either that he assents to the Bill or that he reserves the Bill for the consideration of the President;

Provided further that the Lieutenant Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which,—

(a) in the opinion of the Lieutenant Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill; or

(b) the President may, by order, direct to be reserved for his consideration; or

(c) relates to matters referred to in sub-section (5) of section 7 or section 19 or section 34 or sub-section (3) of section 43.

*Explanation.*—For the purposes of this section and section 25, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the matters specified in sub-section (1) of section 22 or any matter incidental to any of these matters and in either case, there is endorsed

thereon the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

25. When a Bill is reserved by the Lieutenant Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Bills reserved for consideration.

Provided that where the Bill is not a Money Bill, the President may direct the Lieutenant Governor to return the Bill to the Legislative Assembly together with such a message as is mentioned in the first proviso to section 24 and, when a Bill is so returned, the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the Assembly with or without amendment, it shall be presented again to the President for his consideration.

26. No Act of the Legislative Assembly, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation required by this Act was not given, if assent to that Act was given by the Lieutenant Governor, or, on being reserved by the Lieutenant Governor for the consideration of the President, by the President

Requirements as to sanction, etc.

27. (1) The Lieutenant Governor shall in respect of every financial year cause to be laid before the Legislative Assembly, with the previous sanction of the President, a statement of the estimated receipts and expenditure of the Capital for that year, in this Part referred to as the "annual financial statement".

Annual financial statement.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the Consolidated Fund of the Capital; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the Capital,

and shall distinguish expenditure on revenue account from other expenditure.

(3) Notwithstanding anything contained in any law for the time being in force, the following expenditure shall be expenditure charged on the Consolidated Fund of the Capital :—

(a) the emoluments and allowances of the Lieutenant Governor and other expenditure relating to his office as determined by the President by general or special order;

(b) the charges payable in respect of loans advanced to the Capital from the Consolidated Fund of India including interest, sinking fund charges and redemption charges, and other expenditure connected therewith;

(c) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly;

(d) expenditure in respect of the salaries and allowances of Judges of the High Court of Delhi;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by the Constitution or by law made by Parliament or by the Legislative Assembly to be so charged.

Proce-  
dure in  
Legisla-  
tive As-  
sembly  
with  
respect  
to esti-  
mates.

**28. (1)** So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the Capital shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Lieutenant Governor.

Appro-  
priation  
Bills.

**29. (1)** As soon as may be after the grants under section 28 have been made by the Legislative Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Capital of all moneys required to meet—

(a) the grants so made by the Assembly, and

(b) the expenditure charged on the Consolidated Fund of the Capital but not exceeding in any case the amount shown in the statement previously laid before the Assembly.

(2) No amendment shall be proposed to any such Bill in the Legislative Assembly which will have the effect of varying the amount or altering the destination of any grant so made or of varying, the amount of any expenditure charged on the Consolidated Fund of the Capital and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section shall be final.

(3) Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Capital except under appropriation made by law passed in accordance with the provisions of this section.

Supple-  
mentary,  
additional  
or excess  
grants.

**30. (1)** The Lieutenant Governor shall,—

(a) if the amount authorised by any law made in accordance with the provisions of section 29 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the Legislative Assembly, with the previous sanction of the President, another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly with such previous sanction a demand for such excess, as the case may be.

(2) The provisions of sections 27, 28 and 29 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the Capital to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the Capital to meet such expenditure or grant.

31. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 28 for the voting of such grant and the passing of the law in accordance with the provisions of section 29 in relation to that expenditure and the Legislative Assembly shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the Capital for the purposes for which the said grant is made.

Votes on  
account.

(2) The provisions of sections 28 and 29 shall have effect in relation to the making of any grant under sub-section (1) or to any law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys, out of the Consolidated Fund of the Capital to meet such expenditure.

32. Notwithstanding anything in the foregoing provisions of this Part, the Lieutenant Governor may authorise such expenditure from the Consolidated Fund of the Capital as he deems necessary for a period of not more than six months beginning with the date of the constitution of the Consolidated Fund of the Capital, pending the sanction of such expenditure by the Legislative Assembly.

Authori-  
sation of  
expendi-  
ture pend-  
ing its  
sanction  
by Legis-  
lative As-  
sembly.

33. (1) The Legislative Assembly may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business:

Rules of  
procedure.

Provided that the Lieutenant Governor shall, after consultation with the Speaker for the Legislative Assembly and with the approval of the President, make rules—

(a) for securing the timely completion of financial business;

(b) for regulating the procedure of, and the conduct of business in, the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Capital;

(c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Lieutenant Governor in so far as he is required by or under this Act or any law to act in his discretion.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of

Uttar Pradesh in force immediately before the commencement of this Act shall have effect in relation to the Legislative Assembly subject to such modifications and adaptations as may be made therein by the Lieutenant Governor.

Official  
Language  
or lan-  
guages  
of the  
capital  
and  
language  
or lan-  
guages to  
be used  
in Legis-  
lative As-  
sembly.

**34.** (1) The Legislative Assembly may by law adopt any one or more of the languages in use in the Capital or Hindi as the official language or languages to be used for all or any of the official purposes of the Capital:

Provided that the President may by order direct—

(i) that the official language of the Union shall be adopted for such of the official purposes of the Capital as may be specified in the order;

(ii) that any other language shall also be adopted throughout the Capital or such part thereof for such of the official purposes of the Capital as may be specified in the order, if the President is satisfied that a substantial proportion of the population of the Capital desires the use of that other language for all or any of such purposes.

(2) The business in the Legislative Assembly shall be transacted in the official language or languages of the Capital or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the Assembly in his mother-tongue.

language  
to be used  
for Bills,  
Acts, etc.

**35.** Notwithstanding anything contained in section 34, until Parliament by law otherwise provides, the authoritative texts—

(a) of all Bills to be introduced or amendments thereto to be moved in the Legislative Assembly;

(b) of all Acts passed by the Legislative Assembly; and

(c) of all orders, rules, regulations and bye-laws issued under any law made by the Legislative Assembly,

shall be in the English language:

Provided that where the Legislative Assembly has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislative Assembly or in any order, rule, regulation or bye-law issued under any law made by the Legislative Assembly, a translation of the same in the English language published under the authority of the Lieutenant Governor in the Official Gazette shall be deemed to be the authoritative text thereof in the English language.

Restriction  
on discus-  
sion in the  
Legislative  
Assembly.

**36.** No discussion shall take place in the Legislative Assembly with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

**37. (1)** The validity of any proceedings in the Legislative Assembly shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of Legislative Assembly.

(2) No officer or member of the Legislative Assembly in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order in the Legislative Assembly shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

### PART III

#### DELIMITATION OF CONSTITUENCIES

**38. (1)** The Election Commission shall, in the manner herein provided, distribute the seats assigned to the Legislative Assembly under section 3 to single-member territorial constituencies and delimit them having regard to the following provisions, namely:—

Election Commission to delimit constituencies.

(a) all constituencies shall, as far as practicable, be delimited in such manner that the ratio between the population of each of such constituencies and the total population of the Capital, is the same; and

(b) constituencies in which seats are reserved for the Scheduled Castes shall, as far as practicable, be located in areas where the proportion of their population to the total population is comparatively large.

(2) The Election Commission shall—

(a) publish its proposals for the delimitation of constituencies in the Official Gazette and also in such other manner as the Commission may consider fit, together with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which the proposals will be further considered by it;

(b) consider all objections and suggestions which may have been received by it before the date so specified;

(c) after considering all objections and suggestions which may have been received by it before the date so specified, determine by one or more orders the delimitation of constituencies and cause such order or orders to be published in the Official Gazette; and upon such publication, the order or orders shall have the full force of law and shall not be called in question in any court.

**39.** The Election Commission may, from time to time, by notification in the Official Gazette.—

(a) correct any printing mistakes in any order made under section 38 or any erroriarising therein from inadvertent slip or omission; and

(b) where the boundaries or name of any territorial division mentioned in any such order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing such order up-to-date.

Power of Election Commission to maintain delimitation orders up-to-date.

**40. (1)** For the purpose of constituting the Legislative Assembly, a general election will be held as soon as may be, after the delimitation of all the assembly constituencies under section 38.

Elections to the Legislative Assembly.

43 of 1951.

(2) For the purposes of sub-section (1), the Lieutenant Governor shall, by one or more notifications published in the Official Gazette, call upon all the said assembly constituencies to elect members in accordance with the provisions of the Representation of the People Act, 1951, and of the rules and orders made or issued thereunder as applicable under sub-section (3).

(3) The Representation of the People Act, 1950, the Representation of the People Act, 1951, the rules and orders made or issued under the said Acts and all other laws for the time being in force relating to elections shall apply with necessary modifications (including modifications for construing references therein to a State, State Government and Governor as including references to the Capital, Government of the Capital and Lieutenant Governor, respectively) to, and in relation to, the general election referred to in sub-section (1).

43 of 1950.

43 of 1951.

#### PART IV

##### CERTAIN PROVISIONS RELATING TO LIEUTENANT GOVERNOR AND MINISTERS

Matters  
in which  
Lieute-  
nant  
Governor  
to act in  
his dis-  
cretion.

41. (1) The Lieutenant Governor shall act in his discretion in a matter—

(i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President; or

(ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or quasi-judicial functions.

(2) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.

(3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Lieutenant Governor thereon shall be final.

Advice  
by  
Ministers.

42. The question whether any, and if so what, advice was tendered by Ministers to the Lieutenant Governor shall not be inquired into in any court.

Other  
provi-  
sions as  
to Minis-  
ters.

43. (1) Before a Minister enters upon his office, the Lieutenant Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Schedule.

(2) A Minister who, for any period of six consecutive months, is not a member of the Legislative Assembly shall, at the expiration of that period, cease to be a Minister.

(3) The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by law determine, and until the Legislative Assembly so determines, shall be determined by the Lieutenant Governor with the approval of the President.

Conduct  
of busi-  
ness.

44. (1) The President shall make rules—

(a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and

(b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.

(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor.

45. It shall be the duty of the Chief Minister—

(a) to communicate to the Lieutenant Governor all decisions of the Council of Ministers relating to the administration of the affairs of the Capital and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Capital and proposals for legislation as Lieutenant Governor may call for; and

(c) if the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Duties of Chief Minister as respects the furnishing of information to the Lieutenant Governor, etc.

## PART V

### MISCELLANEOUS AND TRANSITIONAL PROVISIONS

46. (1) As from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, all revenues received in the Capital by the Government of India or the Lieutenant Governor in relation to any matter with respect to which the Legislative Assembly has power to make laws, and all grants made and all loans advanced to the Capital from the Consolidated Fund of India and all moneys received by the Capital in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of the National Capital Territory" (referred to in this Act as the Consolidated Fund of the Capital).

Consolidated Fund of the Capital.

(2) No moneys out of the Consolidated Fund of the Capital shall be appropriated except in accordance with and for the purposes and in the manner provided in this Act.

(3) The custody of the Consolidated Fund of the Capital, the payment of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to those matters shall be regulated by rules made by the Lieutenant Governor with the approval of the President.

47. (1) There shall be established a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the National Capital Territory" into which shall be paid from and out of the Consolidated Fund of the Capital such sums as may, from time to time, be determined by law made by

Contingency Fund of the Capital.

the Legislative Assembly; and the said Fund shall be held by the Lieutenant Governor to enable advances to be made by him out of such Fund.

(2) No advances shall be made out of the Contingency Fund referred to in sub-section (1) except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislative Assembly under appropriations made by law.

(3) The Lieutenant Governor may make rules regulating all matters connected with or ancillary to the custody of the payment of moneys into, and the withdrawal of moneys from the aforesaid Contingency Fund.

Audit  
reports.

48. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Capital for any period subsequent to the date referred to in sub-section (1) of section 46 shall be submitted to the Lieutenant Governor who shall cause them to be laid before the Legislative Assembly.

Relation  
of  
Lieute-  
nant  
Governor  
and his  
Ministers  
to  
President.

49. Notwithstanding anything in this Act, the Lieutenant Governor and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President.

Authorisa-  
tion of  
expendi-  
ture by  
President.

50. Where the Legislative Assembly is dissolved or its functioning as such Assembly remains suspended, on account of an order made by the President under article 239AB, it shall be competent for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the Capital pending the sanction of such expenditure by Parliament.

Contracts  
and  
suits.

51. For the removal of doubts it is hereby declared that—

(a) all contracts in connection with the administration of the Capital are contracts made in the exercise of the executive power of the Union; and

(b) all suits and proceedings in connection with the administration of the Capital shall be instituted by or against the Government of India.

Power of  
President  
to remove  
difficulties.

52. (1) If any difficulty arises in relation to the transition from the provisions of any law repealed by this Act or in giving effect to the provisions of this Act and in particular in relation to the constitution of the Legislative Assembly, the President may by order do anything not inconsistent with the provisions of the Constitution or of this Act which appear to him to be necessary or expedient for the purpose of removing the difficulty:

Provided that no order under this sub-section shall be made after the expiry of three years from the date of constitution of the first Legislative Assembly.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Laying  
of rules  
before  
Legisla-  
tive  
Assembly.

53. Every rule made by the Lieutenant Governor under this Act shall be laid, as soon as it is made, before the Legislative Assembly.

54. In section 27A of the Representation of People Act, 1950, for sub-section (3) the following sub-section shall be substituted, namely :—

Amend-  
ment of  
section  
27A of  
Act 43  
of 1950.

“(3) The electoral college for the Union territory of Delhi shall consist of the elected members of the Legislative Assembly constituted for that territory under the Government of National Capital Territory Act, 1991.”.

55. The Delhi Administration Act, 1966 is hereby repealed.

Repeal  
of Act  
19 of 1966.

## THE SCHEDULE

(See sections 4, 12 and 43)

## FORMS OF OATHS OR AFFIRMATIONS

## I

Form of oath or affirmation to be made by a candidate for election to the Legislative Assembly :—

"I, A. B., having been nominated as a candidate to fill a seat in the Legislative Assembly do swear in the name of God that I will bear true  
solemnly affirm

faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

## II

Form of oath or affirmation to be made by a member of the Legislative Assembly :—

"I, A. B., having been elected a member of the Legislative Assembly do swear in the name of God that I will bear true faith and allegiance

Solemnly affirm  
to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

## III

Form of oath of office for a member of the Council of Ministers:—

"I, A. B. do swear in the name of God that I will bear true faith  
solemnly affirm

and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister, and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."

## IV

Form of oath of secrecy for a member of the Council of Ministers:—

swear in the name of God

"I, A. B., do—that I will not directly  
solemnly affirm

or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister except as may be required for the due discharge of my duties as such Minister."

### STATEMENT OF OBJECTS AND REASONS

Under the new article 239-AA proposed to be inserted by the Constitution (Seventy-fourth Amendment) Bill, 1991, a Legislative Assembly and Council of Ministers will be established for the National Capital Territory. Clause (7)(a) of the said article provides that Parliament may by law make provisions for giving effect to, or supplementing the provisions contained in, that article and for all matters incidental or consequential thereto.

2. In pursuance of the said clause, this Bill seeks to make necessary provisions in respect of the Legislative Assembly and its functioning, including provisions relating to the Speaker, Deputy Speaker, qualifications or disqualifications for membership, duration, summoning, prorogation or dissolution of the House, privileges, legislative procedures, procedure in financial matters, address by the Lieutenant Governor to the Legislative Assembly, constitution of Consolidated Fund for the National Capital Territory, Contingency Fund, etc. These are on the lines of the provisions made in respect of a Legislative Assembly of a State with suitable modifications.

3. Under the Bill the delimitation of constituencies will be made by the Election Commission in accordance with the procedure set out therein. Having regard to the special conditions prevailing in Delhi, it has been provided that in respect of the first constitution of the Assembly, such delimitation will be on the basis of provisional figures of population in relation to 1991 census, if final figures have not been published by then.

4. The Bill seeks to give effect to the above proposals.

NEW DELHI:

S. B. CHAVAN.

*The 12th December, 1991.*

*Notes on clauses*

*Clause 3* provides that the total number of seats in the Legislative Assembly of the Capital to be filled by persons chosen by direct elections shall be 70. Seats shall also be reserved for Scheduled Castes in the Assembly. There will be single-member assembly constituencies on the basis of population as defined in this clause.

*Clause 4* provides for the qualifications of the members of the Legislative Assembly.

*Clause 5* provides that the normal duration of the Assembly will be 5 years.

*Clause 6* makes provision for the sessions of the Legislative Assembly, its prorogation and dissolution.

*Clauses 7 and 8* make provisions for the Speaker and the Deputy Speaker of the Legislative Assembly.

*Clauses 9 and 10* provide for the right of the Lieutenant Governor to address and send messages to the Legislative Assembly as well as special address by the Lieutenant Governor.

*Clauses 11 to 14* provide for the right of Ministers as respects Legislative Assembly, voting in Assembly, vacation of seats, etc.

*Clauses 15 to 17* relate to disqualification for membership and penalty for sitting and voting before making oath.

*Clauses 18 and 19* provide for the powers, privileges and salaries and allowances of the members.

*Clause 20* provides for exemption of property of the Government from taxation.

*Clauses 21 to 32* relate to certain restrictions on the powers of the Legislative Assembly to make laws in respect of certain matters, special provisions as to Financial Bills, the procedure as to lapsing of Bills, assent to Bills, Reservation of Bills for President's consideration, previous sanction or recommendation to Bills, Annual Financial Statement Appropriation Bills and grants, etc.

*Clauses 33 to 37* provide for rules of procedure for regulating the procedure and conduct of business of the Legislative Assembly, official language etc.

*Clauses 38 to 40* provide for delimitation of the constituencies by the Election Commission on the basis of the procedure generally followed by the Delimitation Commission, with suitable modifications.

*Clause 41* sets out the matters in which Lieutenant Governor is to act in his discretion.

*Clauses 42 and 43* contain the normal provisions relating to the advice by the Ministers and other provisions regarding salaries and allowances of Ministers.

*Clause 44* relates to rule making power of the President for the allocation of business to the Ministers and for more convenient transaction of business with the Ministers.

*Clause 45* provides for duties of Chief Minister as respects the furnishing of information to the Lieutenant Governor, etc.

*Clauses 46 to 48* relate to the Consolidated Fund and Contingency Fund of the Capital and the audit reports.

*Clause 49* provides for relation of Lieutenant Governor and his Ministers to President.

*Clause 50* relates to authorisation of expenditure by the President in certain contingencies.

*Clause 51* provides that contracts and suits are to be in exercise of the executive power of the Union.

*Clause 52* provides for the power of the President to remove difficulties in giving effect to the provisions of the Bill.

*Clause 53* provides for laying of rules made by the Lieutenant Governor before the Legislative Assembly.

*Clause 54* seeks to amend section 27A of the Representation of the People Act, 1950 to provide for electoral college for the Council of States in relation to the Capital.

*Clause 55* seeks to repeal the Delhi Administration Act, 1966.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for setting up of a Legislative Assembly for the National Capital Territory. Clauses 7(5), 19 and 43(3) relate to payment of salaries and allowances to the Speaker, the Deputy Speaker, Members of the Legislature and the Ministers. The expenditure on such salaries and allowances and other expenditure of incidental nature such as on the additional staff for the Legislature and Council of Ministers will be met from the Consolidated Fund of the National Capital Territory. On a rough estimate, the expenditure on the salaries and allowances, etc., is expected to be about Rs. 20 crores per annum. But there would also be a corresponding saving on the abolition of the Metropolitan Council of Delhi to the extent of about Rs. 10 crores.

2. Clause 38 provides for the delimitation of seventy single member territorial constituencies for the proposed Assembly of the National Capital Territory. For this purpose, a non-recurring expenditure of about Rs. 50,000 is likely to be incurred. This expenditure will be met from the Consolidated Fund of India.

3. The Bill does not involve any other expenditure whether of a recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 33 of the Bill empowers the Legislative Assembly of the Capital to make rules, subject to the provisions of this Bill, for regulating its procedure and conduct of its business. It also provides that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules for securing the completion of financial business, regulating the procedure and conduct of business in the Legislative Assembly in relation to any financial matter or to any Bill for appropriation of monies out of the Consolidated Fund of the Capital and for prohibiting the discussion of or asking any questions which affect the discharge of the functions of the Lieutenant Governor in so far as he is required to act in his discretion.

2. Clause 44 of the Bill empowers the President to make rules regarding allocation of business to Ministers and transaction of such business. It further empowers the Lieutenant Governor to make rules specifying the manner of authenticating the orders issued in his name.

3. Clauses 46(3) and 47(3) of the Bill provide that the Lieutenant Governor may make rules regarding the custody, etc., of the Consolidated Fund of the Capital and the Contingency Fund of the Capital.

4. Clause 52 of the Bill empowers the President to issue orders for removing any difficulty in giving effect to the provisions of this Bill and in particular in relation to the constitution of the Legislative Assembly

5. The matters mentioned above are of a procedural nature and it is difficult to provide for them in detail in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

## BILL NO. 212 OF 1991

*A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1991-92.*

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Appropriation (No. 5) Act, 1991.

Issue of  
Rs. 304.  
13,00,000  
out of the  
Consoli-  
dated  
Fund of  
India  
for the  
year  
1991-92.

2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of three hundred four crores and thirteen lakh rupees towards defraying the several charges which will come in course of payment during the financial year 1991-92, in respect of the services specified in column 2 of the Schedule.

Appro-  
priation.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

THE SCHEDULE  
(See sections 2 and 3)

1	2	3		
		Sums not exceeding		
Vote	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
1	Agriculture . . . . . Revenue	1,00,000	..	1,00,000
	Capital	1,00,000	..	1,00,000
5	Department of Chemicals and Petrochemicals . . . . . Revenue		3,34,00,000	3,34,00,000
	Capital	5,88,00,000	..	5,88,00,000
6	Department of Fertilizers . . . . . Revenue	250,00,00,00	..	250,00,00,000
15	Telecommunications Services . . . . . Capital	1,00,000	..	1,00,000
16	Ministry of Defence . . . . . Revenue	..	1,00,000	1,00,000
40	Department of Health . . . . . Revenue	..	1,00,000	1,00,000
42	Ministry of Home Affairs . . . . . Revenue	1,0,000	..	1,00,000
49	Art and Culture . . . . . Revenue	..	1,00,000	1,00,000
55	Ministry of Information and Broadcasting . . . . . Revenue	..	2,00,000	2,00,000
58	Law and Justice . . . . . Revenue	..	1,77,000	1,77,000
60	Ministry of Mines . . . . . Revenue	18,00,00,000	..	18,00,00,000
67	Department of Power . . . . . Capital	1,00,000	..	1,00,000
82	Ministry of Welfare . . . . . Capital	25,00,00,000	..	25,00,00,000
83	Atomic Energy . . . . . Capital	1,00,000	..	1,00,000
85	Department of Electronics . . . . . Revenue	1,00,000	..	1,00,000
93	Delhi . . . . . Revenue	2,00,000	..	2,00,000
	TOTAL	298,97,00,000	5,16,00,000	304,13,00,000

## STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of article 114(1) of the Constitution of India, read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the Supplementary expenditure charged on the Consolidated Fund of India and the grants made by the Lok Sabha for expenditure of the Central Government, excluding Railways, for the financial year 1991-92.

SHANTARAM POTDUKHE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE  
CONSTITUTION OF INDIA

[Copy of letter No. F. 4(54)-B(SD)/91, dated the 12th December, 1991 from Shri Shantaram Potdukhe, Minister of State for Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to authorise appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year ending 31st day of March, 1992, recommends the introduction of the Appropriation (No. 5) Bill, 1991 in Lok Sabha and also recommends to Lok Sabha the consideration of the Bill under article 117(1) and (3) of the Constitution read with article 115(2) thereof.

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K. C. RASTOGI,  
Secretary-General.